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Customer Number

Patent
Case No.: 59109US004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor: PEUKER, MARC
Application No.: 10/598613 Confirmation No.: 7832
Filed: 10-MAR-2005
Title: CAPSULE FOR STORAGE, MIXING AND DISPENSING MATERIALS

**COMMUNICATION REQUESTING WITHDRAWAL OF
FINALITY OF REJECTION**

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR § 1.8(a)]

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

July 8, 2011 /Tracey L. Riley/
Date Signed by: Tracey L. Riley

Dear Sir:

This communication is in regard to the Office Action dated June 28, 2011 in the captioned United States patent application. In that Office Action, the Examiner indicated that “Applicant’s arguments with respect to claims 1-10 and 20-25 have been considered but are moot in view of the new ground(s) of rejection.” The new grounds of rejection were then made final, and Applicants have had no opportunity to consider or respond before the final rejection was issued. For that reason, as explained in more detail below, it is respectfully requested that the finality of the rejection be withdrawn, and that a new period for response to a *non-final* rejection be set.

The Office Action finally rejected claims 1 through 10 and 20 through 25 on new grounds not previously introduced, as the Office Action admits. Section 706.07(a) of the MPEP indicates that “second or subsequent actions on the merits shall be final, *except where the examiner introduces a new ground of rejection* that is [not] necessitated by the applicant’s amendment of the claims” Although the Examiner indicated that “Applicant’s amendment necessitated the new ground(s) of rejection,” Applicants respectfully disagree. The Examiner had previously cited the Pierick reference as showing the features of the last section of claim 1,

and the amendments to that section of the claim have neither introduced new elements nor changed the basic nature of the claimed invention. Therefore, it cannot reasonably be said that the new grounds were necessitated by Applicant's clarifying amendment. The requirements for entering a final rejection under 706.07(a) of the MPEP have not been satisfied, and it is requested that the finality of the rejection be withdrawn and that a new period for response to a *non-final* rejection be set in the interests of advancing the prosecution of this application.

Reconsideration of the finality of the rejection, and a new period for response to a non-final rejection, are respectfully requested.

Respectfully submitted,

July 8, 2011

Date

By: /Peter L. Olson/

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